



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 11, 1998

### **H.R. 1534** **Citizens Access to Justice Act of 1998**

*As reported by the Senate Committee on the Judiciary on February 26, 1998*

#### **SUMMARY**

Enacting H.R. 1534 would give greater access to federal courts to plaintiffs making claims based on property owners' rights secured by the Constitution. As a result, the bill is likely to impose additional costs on the U.S. court system. While some of the affected cases could be time-consuming and costly, CBO cannot predict the number or cost of such cases. Enactment of H.R. 1534 would not affect direct spending or receipts of the federal government, and therefore, pay-as-you-go procedures would not apply.

The Fifth Amendment prohibits the taking of private property for public use without just compensation. This restriction on government action is extended to the states through the due process clause of the 14th Amendment. H.R. 1534 would primarily affect takings claims directed at the regulatory decisions of state and local governments. First, this bill would prohibit a federal district court from exercising its current right to abstain from hearing certain takings claims. H.R. 1534 also would define "final decision" for these property rights claims, thereby relaxing the standards by which such claims are found ripe for adjudication in federal district courts or the U.S. Court of Federal Claims. With regard to district courts, the definition specifically removes the requirement that plaintiffs exhaust all state judicial remedies before proceeding to federal court. The bill also would give the U.S. Court of Federal Claims and the U.S. district courts the authority to adjudicate all claims—whether for monetary or for injunctive and declaratory relief—against the federal government arising from actions of federal agencies that are alleged to take private property in violation of the U.S. Constitution. Plaintiffs would choose which court would hear their claim.

#### **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

Most takings cases affected by this bill would originate from a dispute over a state or local land use regulation. When local regulation is at issue, a number of appeals to local governing boards may occur. When those venues are exhausted and when the claim asserts a taking,

federal courts often defer to state courts by refusing jurisdiction in such matters. The federal courts often argue that such cases are not ripe for federal adjudication because plaintiffs have not exhausted their opportunities to obtain compensation through the state courts. CBO expects that enacting the jurisdictional changes under H.R. 1534 would give plaintiffs greater access to federal courts, thus imposing additional costs on the U.S. court system to the extent that additional takings claims are filed and heard in federal courts.

Based on information from various legal experts, CBO estimates that only a small percentage of all civil cases filed in state courts involve takings claims. Of these, CBO believes that only a small proportion would be tried in federal court as the result of H.R. 1534, in part because state and local regulators may have an incentive to settle with plaintiffs in order to avoid a trial in federal court. On the other hand, most cases that would reach trial in a federal court as a result of this bill are likely to involve relatively large claims and could be time-consuming and costly. CBO has no basis for estimating the number of cases that would be affected or the amount of court costs that would result. Any such costs would come from appropriated funds.

CBO does not expect that granting jurisdiction over certain claims against the United States to both the U.S. Court of Federal Appeals and U.S. district courts would have any significant effect on the budget because this provision would not affect the outcome of complaints or cause any material change in the caseload of the federal court system. The bill could result in earlier decisions in some proceedings, which may change the timing of federal court and agency costs, but we expect that such effects would be minimal.

H.R. 1534 also would require the courts to award attorneys fees and other litigation costs to any prevailing plaintiff. Because litigation costs are already often awarded at the discretion of the courts, CBO does not expect that enacting H.R. 1534 would significantly change payments for such costs. Attorneys' fees, however, are not routinely awarded; therefore, enacting H.R. 1534 could increase costs to federal agencies. To the extent that enacting this bill results in additional cases involving larger claims, this provision could increase both litigation costs and attorneys' fees paid by agencies. Such costs would likely come from funds subject to appropriation, but CBO has no basis for estimating the magnitude of any such new discretionary spending.

**PAY-AS-YOU-GO CONSIDERATIONS:** None.

## **INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT**

Section 4 of the Unfunded Mandates Reform Act of 1995 (UMRA) excludes from application of that act legislative provisions that enforce constitutional rights of individuals. Because the changes to federal jurisdiction over property rights cases could involve the enforcement of certain individual constitutional rights, H.R. 1534 may be excluded. In any event, because the changes only affect federal court procedures, the bill would not impose any enforceable duty on state, local, or tribal governments, or on the private sector.

### **ESTIMATE PREPARED BY:**

Federal Costs: Susanne S. Mehlman and Deborah Reis  
Impact on State, Local, and Tribal Governments: Leo Lex  
Impact on the Private Sector: Matt Eyles

### **ESTIMATE APPROVED BY:**

Robert A. Sunshine  
Deputy Assistant Director for Budget Analysis